

WESTFALL

LAW PLLC

247 West Fayette Street, Suite 203 · Syracuse, NY 13202 · (315) 412-0440
5032 Anchor Way, Suite 8 · Christiansted, St Croix 00820 · (340) 227-0017
Licensed to Practice in New York and the U.S. Virgin Islands

VIA EMAIL, CERTIFIED AND REGULAR MAIL

CEASE & DESIST AND DEMAND FOR ACCESS TO HOA INFORMATION

May 4, 2022

Barbara Peel
5032 Cotton Valley 2
Cotton Valley, VI 00820

Re: Access to POA Financials, Treasurer's Email, and QuickBooks & Dropbox Accounts

Dear Ms. Peel,

Please be advised that this office represents Yellow Cliff, Hope & Carton Hill Property Owner's Association with regard to many of their association-related legal issues. This letter serves to: (a) demand the turnover of association documents and property; (b) respond to your April 28, 2022 letter in which you attempt to rescind your resignation; (c) demand that you Cease & Desist activities detrimental to the Association; and (d) document your ineligibility to hold a position on the board of directors.

-- Demand for Association Documents and Property

You resigned from your role as Treasurer of the Property Owner's Association in January 2022. Your resignation was accepted by the Board at the February 22, 2022, meeting of association's Board of Directors. It is my understanding that, despite numerous requests, you have not turned over access to the Association's property, accounts, and financials, including the Association's QuickBooks account, the email account for the Association's Treasurer, nor the Association's DropBox account.

As such, **DEMAND IS HEREBY MADE that, within fourteen (14) days from the date hereof you must turn over access to all Association property, accounts and financials** to Vice President, Nancy Barber, which shall include but is not limited to the username and password for the Treasurer's Email account and the Association's Drobox account, the QuickBooks License Key paid for by the Association, as well as any of the Association's documentation related thereto.

PLEASE TAKE NOTICE that should you fail to turnover access to these accounts within fourteen (14) days from the date of this letter, the Yellow Cliff, Hope & Carton Hill Property Owner's Association shall commence a lawsuit against you for breach of your fiduciary duty, for unjust enrichment, and for violations of 13 V.I.C. § 341, seeking to recover any and all damages related to the failure to provide access to these accounts and the use of any unapproved or misappropriated funds, in addition to costs and attorneys' fees, to the extent permitted by Law.

-- Response to attempt to rescind resignation

On April 28, 2022, you sent a letter to the members of the Yellow Cliff, Hope & Carton Hill Property Owner's Association in which you: (a) indicate your desire to "*rescind [your] resignation and reassert [your] membership on the board and your position as treasurer/Secretary;*" and (b) question or undercut the validity of the appointments of the new members of the Association's Board of Directions by claiming that the new Board was not properly appointed.

In response to your April 28th letter, please note the following:

1. Your resignation, along with the resignations of Barbara Hamilton, David Campbell, and Tony Peel, was accepted at the February 22, 2022, meeting of the Board of Directors. A copy of the meeting minutes are attached hereto for your review as **Exhibit "A."**
2. You claim that "neither the Board, nor the purported replacement members of the Board, have formally acknowledged or accepted [your] resignation at a members' meeting." Nowhere in the Association's Articles of Incorporation, By-Laws, or in Virgin Islands statute is it required that the Board accept your resignation at a members' meeting. The acceptance of your resignation at the February 22, 2022, meeting of the Board of Directors is legally sufficient and is binding.
3. Your claim that newly appointed Board is not valid because "*a special meeting was never called for the members to have an election,*" is baseless and without merit. Because the Association's By-Laws are silent on how vacancies are filled, the Virgin Island Code controls the appointment of successor Board Members. Chapter 3 of Title 13 of the Virgin Islands Code governs nonprofit corporations. Pursuant to 13 V.I.C. §64:

Whenever any vacancies shall happen among the directors by death, resignation or otherwise, except by removal and the election of a successor, they shall be filled by appointment by a majority of the remaining members of the board of directors, though less than a quorum, for the unexpired term of such vacancies.

The newly appointed Board of Directors was appointed pursuant to 13 V.I.C. §64 on February 23, 2022. The appointments are therefore legally sufficient and are binding on the Association. Copies of the Letters documenting the appointment of Nancy Barber, Brett Shurr, and Ethleen Johnson are attached hereto for your review as **Exhibit "B."**

4. You claim that the newly appointed Board is not valid because “*there has not been a quorum that is necessary to replace or appoint members to the board.*” 13 V.I.C. §64 specifically states that the appointment of replacement directors “shall be filled by appointment by a majority of the remaining members of the board of directors, **though less than a quorum** [...].” As such, the appointments of the replacement board members are legally sufficient and are binding on the Association. This claim is baseless and without merit.
5. Your claim that the newly appointed Board is not valid because “*The appointment of officers would have to take place at a special members meeting*” is also baseless and without merit. Nowhere in the Association’s Articles of Incorporation, By-Laws, or in Virgin Islands statute is it required that the Board appoint officers at a special members meeting.
6. You claim that the newly appointed Board is not valid because “*members were appointed through Facebook and phone calls without all members having input.*” Nowhere in the Association’s Articles of Incorporation, By-Laws, or in Virgin Islands statute is it required that members have input on the appointment of replacement board members. 13 V.I.C. §64 controls the appointment of replacement board members, and states that the vacancies are to be filled by a majority of the remaining members of the Board. The vacancies were in fact filled by a majority of the remaining members of the Board. As such, their appointment is legally sufficient and is binding on the Association.
7. You claim that “*USVI Code Title 13 Chapter 1 does not apply to our association.*” This claim is baseless and without merit. Chapter 3 of Title 13 of the Virgin Islands Code governs nonprofit corporations. ***ALL*** nonprofit corporations organized under the laws of the U.S. Virgin Islands are subject to Chapter 3 of Title 13 of the V.I. Code. §499 of Chapter 3, Title 13 of the V.I. Code states that “Every corporation created under this chapter shall be deemed and held to be subject to the provisions of chapter 1 of this title.” As such, Chapter 1 of Title 13 of the V.I. Code applies to your association, and to every other nonprofit corporation in the Virgin Islands. Again, your claims are baseless and without merit.

-- CEASE & DESIST activates detrimental to the Association

It has also come to my attention that you continue to hold yourself out as a representative of the Association to third parties and members of the Association, and that you have represented to Relators and others that there is “presently no Board.” This is not accurate. As such, the Association hereby demands that you **CEASE & DESIST from: (a) taking any action on behalf of the association, (b) holding yourself out to anyone that you are a representative of the association, and/or (c) affecting or otherwise impacting any association business or any business taking place on propert(ies) within the Association.**

-- Ineligibility to hold elected office

I understand that you were elected as the Secretary/Treasurer at the Annual Meeting of the Members on January 20, 2022. However, due to your failure to comply with 13 V.I.C. §188, you were ineligible to any office on the January 20th election.

13 V.I.C. §188 requires:

*The officer who has charge of the stock ledger of a corporation shall prepare and make, at least ten days before every election of directors, a complete list of the stockholders entitled to vote at said election, arranged in alphabetical order. Such list shall be open during the usual hours for business at the place where said election is to be held for 10 days next preceding the date of said election, to the examination of any stockholder, and shall be produced and kept at the time and place of election during the whole time thereof, and subject to the inspection of any stockholder who may be present. **Upon the willful neglect or refusal of the said directors to produce such a list at any election they shall be ineligible to any office at such election.***

On January 16, 2022, at 2:11pm, Doug Nicoll requested a copy of this ledger so that he could disseminate pertinent information. You responded: "I can not give out contact information. Sorry" This refusal is a direct violation of 13 V.I.C §188, and your obligations as the secretary of the Association. Due to your refusal to produce the list requested, you are ineligible to any office.

Should you further attempt to illegally "rescind your resignation" or pursue an elected office in violation of Virgin Islands Law, these issues will be raised with the Membership, and with the Virgin Islands Superior Court as necessary.

Finally, to reiterate, **PLEASE TAKE NOTICE** that should you fail to turnover access to **all Association property, accounts and financials** to Vice President, Nancy Barber within fourteen (14) days from the date of this letter, the Yellow Cliff, Hope & Carton Hill Property Owner's Association shall commence a lawsuit against you for breach of your fiduciary duty, for unjust enrichment, and for violations of 13 V.I.C. § 341, seeking to recover any and all damages related to the failure to provide access to these accounts and the use of any unapproved or misappropriated funds, in addition to costs and attorneys' fees, to the extent permitted by Law.

Please do not hesitate to call me if you have any questions or concerns related to the information contained herein.

Respectfully,

WESTFALL LAW PLLC

/s/ Ethan Peterson

Ethan M. Peterson, Esq.